HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1519/2003 (S/S)

Smt. Naseem Jahan

Vs

State of Uttaranchal

Approved for reporting.

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~~Not Approved for reporting~~

Date of decision 20.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1519 (SS) OF 2003

Smt. Naseem Jahan, W/o Jumma,
R/o Mahesh Pura, Bazpur,
District- Udham Singh Nagar. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Public Works Department.
2. Engineer in Chief Public Works Department, Uttaranchal.
3. The Chief Engineer, P.W.D. Kumaun Division, Almora.
4. The Executive Engineer P.W.D., Rudrapur.

.....Respondents.

20.02.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav, learned counsel for the petitioner and learned Standing Counsel for the State.

By the present writ petition, the petitioner has prayed for a writ of Mandamus directing the respondents no.2, 3 and 4 to consider the case of the petitioner for the appointment on compassionate ground in P.W.D. Rudrapur on the post of Beldar.

Brief facts giving rise to the present writ petition are that the husband of the petitioner namely Sri Jumma, who has worked as Beldar, died on 11th December, 2001 and his service as Beldar was regularized on 30th July, 1999.

However, the said order was cancelled on 29th August, 2000. The said cancellation order was challenged in Writ Petition No. 101 (SS) of 2000 Gyan Prakash & Others Vs. State of U.P. and others and on 22.10.2003, the petition was allowed

and the order canceling regularization of the petitioner was quashed.

Both the parties have informed that against the cancellation, Special Appeal has already been filed and the same is pending although no interim order has been granted.

However, assuming that the husband of the petitioner was a Beldar, he died on 11th December, 2001, an application was filed by the petitioner praying for the appointment on compassionate ground, but the application has not been considered a yet.

The petitioner has referred various judgments where even Beldar who has worked continuously for more than 15 years have been treated to be entitled for the compassionate appointment.

A counter affidavit has been filed by the State, where in paragraph 6, it has been mentioned that the government of Uttaranchal has referred the Government Order by which the policy of regularization has been framed. The petitioner has only submitted that even Beldar or work charge and a person on temporary basis is entitled for the compassionate appointment. In paragraph 8 of the counter affidavit it has been mentioned as under:-

"8. That in reply to the contents of para 10 of the writ petition, it is to be stated that there has not been any violation of Article 21 of the Constitution of India, because, the authorities are bound by the direction contained in the Government Order. As submitted above, now the Government Order dated 03.01.2003 has issued in which the provision ofr giving appointment on compassionate ground to the dependants of employees serving in work charge department dying in harness has been made and the respondents are

ready to consider the claim of the petitioner as per direction of this Hon'ble Court."

Learned counsel for the respondents has referred paragraph 10 of the G.O. dated 3rd January, 2003. The relevant paragraph 10 is quoted below:-

"10. ऐसे कार्य प्रभारित कर्मी जो इस शासनादेश में उल्लिखित व्यवस्थाओं के अनुरूप नियमित पदों पद विनियमितीकरण किये जाने हेतु पात्र हैं, कि मृत्यु की द ा में उनके आश्रितों को कर्मी की मृत्यु से 1 वर्ष के अन्दर मृतक आश्रित के रूप में दैनिक वेतन भोगी कर्मियों के रूप में तैनात किया जा सकेगा।"

In ***santosh Kumar Mishra Vs. State of U.P. [(2002) 1 UPLBEC 337.*** It has been held as under:-

> *"Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner's father would been deemed to have been a regular Government servant in view of the fact that his appointment has been converted into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata was working as a paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed*

in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years, until his death and though he may be a daily the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saraj Devi Vs. State of U. P. and others, reported in 1999 (3) ESC 2187 (All): 1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

"The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for."

" It may also be taken note of that if daily wager or a work charge employee is engaged against a particular

duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy."

Relying upon various judgment of the Apex Court as well as this Court, I have taken a view in Laxmi Devi Vs. General Manager Kumaon Jal Sansthan and others in W.P. No. 1119 (ss) of 2004, which was decided on 09.05.2005 that a daily wager is also entitled for compassionate appointment. Relevant observations are quoted below:-

"Further in view of the judgment of the Apex Court in the case of ***Pushpa Lata Dixit vs. Madhyamik Shiksha Parishand and others 1991 (18) ALR 509 and Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976,*** *so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.*

Similar view has been taken in the case of ***State of Manipur Vs. Thingujam Brojen (1996) 9 SCC Page 29, further in Smt. Saroj Devi Vs. State of U.P. 1999 (3) Educational and Service Cases Page 215,*** *the benefit has also been extended to the temporary employees.*

In view of the aforesaid facts and circumstances the writ petition is allowed. The respondents are directed to consider the appointment of the petitioner under Government Servant Dying in Harness Rules. 1974 within a period of three months from the filing of the certified copy of the order.:

Since the husband of the petitioner expired in the year, 2001, it is desirable in the interest of justice that the matter of compassionate appointment should have been considered without any delay in view of the judgment of Smt. Sushma

Gosai and others Vs. Union of India and others, 1989 (4) SCC 468.

In the case of ***Smt. Sushma Gosai and others Vs. Union of India and others, 1989 (4) SCC, 468,*** the Apex Court has held as under:-

" We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. It there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent no.2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, the matter is sent back to the Executive Engineer, P.W.D., who will dispose of the application

dated 20.11.2003 (Annexure No. 4) within a period of six weeks from the filing of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

20.02.2006
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